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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,438	01/31/2001	Dennis L. Salbilla	P02104US0/10100157	3287

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08/15/2005

Dennis L. Salbilla
1906 Tangle Pines Court
Houston, TX 77062

EXAMINER

CHORBAJI, MONZER R

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 08/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/773,438

Applicant(s)

SALBILLA, DENNIS L.

Examiner

MONZER R. CHORBAJI

Art Unit

1744

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 July 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1,5,6,14,15 and 27.
Claim(s) withdrawn from consideration: 2-4,7-11,13,16 and 17.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.

Continuation of 13. Other:

On pages 8-9 of the Remarks section, applicant argues that, "According to Webster's New World Dictionary, the word constant means going on all the time; continual; persistent. As such, the Applicant's specification more than reasonably conveys to one of ordinary skill in the art that the electric charge can be continuous." The specification on pages 14-17 and 19 does not teach continuously applying an electric charge nor does it disclose time intervals. Instead, the specification teaches applying a current whenever is needed to reduce fouling to heat exchangers. Thus, in view of the teachings of the specification, the meaning of the word "constant" is considered to be equivalent to invariable, uniform, something that does not change. See page 247 of Merriam-Webster's Collegiate Dictionary, Tenth Edition. Like the specification, the Carson reference teaches connecting a current source to heat exchangers and to apply the current when needed to clean fouled exchangers (col.4, lines 51-60).

On page 9 of the Remarks section, applicant argues that, "Terms like prevent imply a continual time interval opposed to terms like remove and clean that imply intermittent usages after the fact, as proven by the disclosure of Carson." None of the instant claims under consideration recite the feature of "preventing". Furthermore, since the instant claims and the Carson reference are performing the same steps then the Carson reference is inherently preventing the accumulation of fouling within heat exchangers.

On page 10 of the Remarks section, applicant argues that, "In other words, Carson is a removal or cleaning process, not a preventive process." Again, as mentioned above none of the instant claims recite the feature "preventing".

On pages 10-11 of the Remarks section, applicant argues that, "As discussed above, any longer duration of electric charge to the cooler of Carson would impart too much heat and would render the cooler unsatisfactory for its intended purpose which is cooling a process stream." As mentioned above, the specification on pages 14-17 and 19 does not teach continuously applying an electric charge nor does it disclose time intervals. Instead, the specification teaches applying a current whenever is needed to reduce fouling to heat exchangers. Like the specification, the Carson reference teaches connecting a current source to heat exchangers and to apply the current when needed to clean fouled exchangers (col.4, lines 51-60). In addition, the Carson reference teaches applying a constant electric charge (col.4, lines 15-18). The instant claims do not recite any time intervals or as discussed above does not teach applying continuous electric charge.


JOHN KIM

SUPERVISORY PATENT EXAMINER